

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

**UNITED STATES OF AMERICA and
STATE OF MARYLAND,**

Plaintiffs,

v.

WILLIAM COSTELLO,
JANICE F. COSTELLO,
THE PERMIT COORDINATORS, INC.,
and SCOTT C. MIELKE.

Defendants.

Civil Action No. 1:06-cv-00329-RDB

CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the United States Army Corps of Engineers (“the Corps”), and the State of Maryland, on behalf of the Maryland Department of the Environment (“MDE”) (collectively, “Plaintiffs”) filed the Complaint herein against Defendants William Costello, Janice Costello, Scott Mielke and The Permit Coordinators, Inc. (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a); Section 10 of the Rivers and Harbors Act (“RHA”), 33 U.S.C. § 403; and Section 16-202(a) of the Environment Article of the Annotated Code of Maryland (“Maryland Environment Article”) (collectively, “the Statutes”).

WHEREAS, the Complaint alleges that Defendants violated the Clean Water Act Section 301(a), and Section 16-202(a) of the Maryland Environment Article by discharging dredged or

fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States and Maryland State tidal wetlands at and abutting 1423 Sharps Point Road located in Annapolis, Maryland (“the Site”) and more fully described in the Complaint, without authorization by the United States Army Corps of Engineers (“the Corps”) or MDE;

WHEREAS, the Complaint alleges that Defendants violated Section 10 of the Rivers and Harbors Act by constructing a structure which obstructs or alters the navigable capacity of a navigable water of the United States, without affirmative authorization by Congress or a permit issued by the Corps;

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants and fill material into waters of the United States in violation of the Statutes; (2) to require Defendants to remove the unauthorized obstruction to the navigable capacity of waters of the United States; (3) to require Defendants, at their own expense and at the direction of EPA, the Corps, and MDE, to restore and/or mitigate the damages caused by their unlawful activities; (4) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d); and (5) to require Defendant William Costello to pay civil penalties as provided in Sections 16-502(a) and (b) of the Maryland Environment Article.

WHEREAS, Defendants do not admit any liability as alleged in the Complaint or Cross-Claim.

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of Plaintiffs’ claims under the Statutes as set forth in the Complaint regarding the Site;

WHEREAS, the Parties agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving Plaintiffs' claims under the Statutes against Defendants in this case; and

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of all cross-claims filed by Cross-Plaintiffs, William and Janice Costello, against Cross-Defendants The Permit Coordinators, Inc. and Scott C. Mielke;

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of Plaintiffs' claims against Defendants and all claims between and among Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the Parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367, Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and RHA Section 9 et seq., 33 U.S.C. §§ 401 et seq.

2. Venue is proper in the District of Maryland pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b); RHA Section 12, 33 U.S.C. § 406; and 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344; Sections 10 and 12 of the RHA, 33 U.S.C § 403, 406; and Sections 16-202 and 16-502 of the Maryland Environment Article.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon the Parties hereto, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any Party whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against Defendants, Defendants shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with Defendants, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Site, the Defendant making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA, the United States Department of Justice, and MDE at the addresses specified in Section IX below that such notice has been given. As a condition to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief (including mitigation) under CWA Section 301, RHA Section 12, and Section 16-502 of the Maryland Environment Article, with respect to the discharge of fill material alleged in the complaint. This Consent Decree shall also constitute a complete and final settlement of all claims for civil penalties alleged in the Complaint against Defendants.

7. It is the express purpose of the Parties in entering this Consent Decree to further the objectives set forth in the Statutes. All plans, construction, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the Statutes.

8. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, or dredging or filling State tidal wetlands, unless such discharge or dredging or filling complies with the Statutes and their implementing regulations.

9. The Parties acknowledge that Nationwide Permit 32, found at 72 Fed. Reg. 11,092, 11,187 (March 12, 2007), authorizes any dredged or fill material that was placed landward of the toe of the new structure identified in Appendix A to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree. The Parties further acknowledge that Nationwide Permit 32 (72 Fed. Reg. 11,187), authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material

necessary for work required by this Consent Decree shall be subject to the conditions of the Nationwide Permit and this Consent Decree.

10. The Parties acknowledge that the State of Maryland does not have a State law analogous to Nationwide Permit 32, but that the entry of this Consent Decree shall constitute the State's authorization to undertake the work to be performed pursuant to Nationwide Permit 32 and this Consent Decree and that no separate State licenses, permits or other approvals are required to undertake the work to be performed pursuant to this Consent Decree.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, Section 16-202 of the Maryland Environment Article, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps or MDE to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit EPA's or MDE's ability to exercise their authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c) or Section 16-202 of the Maryland Environment Article for work falling outside the scope of this Consent Decree.

12. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

13. Except as stated in paragraph 6 with respect to civil claims for injunctive relief (including mitigation) this Consent Decree in no way affects the rights of Plaintiffs against any person not a party to this Consent Decree.

14. Plaintiffs reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

15. Nothing in this Consent Decree shall constitute an admission of fact or law by any Party, or an admission of liability, wrongdoing, or negligence.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES TO THE UNITED STATES OF AMERICA

16. Defendants William and Janice Costello shall pay a civil penalty to the United States in the amount of Ten Thousand Dollars (\$10,000), within thirty (30) days of entry of this Consent Decree.

17. Defendant The Permit Coordinators, Inc. shall pay a civil penalty to the United States in the amount of Ten Thousand Dollars (\$10,000) within thirty (30) days of entry of this Consent Decree. In the event Defendant The Permit Coordinators, Inc. fails to pay this civil penalty within the time period above, Defendant Scott C. Mielke and Defendant The Permit Coordinators, Inc. will be jointly and severally liable for this civil penalty and any penalty assessed pursuant to paragraph 43.

18. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2005V00865, EPA Region III and the DOJ case number 90-5-1-1-17683. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Maryland. In the alternative, Defendants shall make the above-referenced payments by check or money order payable to the U.S. Department of Justice and referencing U.S.A.O. file number 2005V00865, EPA Region III and the DOJ case number 90-5-1-1-17683. The check or money order shall be mailed to the U.S. Attorney's Office, 36 S.

Charles Street, 4th Floor, Baltimore, Maryland 21201, Attention Financial Litigation Unit. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

19. Upon payment of the civil penalties required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section IX of this Consent Decree, that such payment was made in accordance with Paragraph 18.

20. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

PAYMENT INTO THE MARYLAND TIDAL WETLANDS COMPENSATION FUND

21. Defendants William and Janice Costello shall pay into the State of Maryland Tidal Wetlands Compensation Fund ("the Fund") the amount of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of entry of this Consent Decree.

22. Defendant The Permit Coordinators, Inc. shall pay or cause to be paid into the Fund the amount of Fifteen Thousand Dollars (\$15,000) within thirty (30) days of entry of this Consent Decree. In the event Defendant The Permit Coordinators, Inc. fails to pay this amount within the time period above, Defendant Scott C. Mielke and Defendant The Permit Coordinators, Inc. will be jointly and severally liable for this amount and any penalty assessed pursuant to paragraph 43.

23. Defendants shall make the above-referenced payments by separate single check or

money order for the entire amount of the payment made payable to the Fund. The payment shall be mailed to the Maryland Department of the Environment, Tidal Wetlands Compensation Fund, Fiscal Services Division, P.O. Box 2057, Baltimore, Maryland 21203-2057. The check should include in the lower left hand corner the notation: "PCA 13762/4141."

24. Upon payment into the Fund, Defendants shall provide written notice, at the addresses specified in Section IX of this Consent Decree, that such payment was made in accordance with Paragraph 23.

RESTORATION

25. Defendants William and Janice Costello and/or their agents, contractors or assigns shall perform restoration projects by March 31, 2008, subject to Paragraph 38 below, in accordance with the terms and conditions stated in Appendix A appended hereto and incorporated herein by reference.

26. Defendant The Permit Coordinators, Inc. shall, within thirty (30) days of entry of this Consent Decree, pay or cause to be paid to Defendants William and Janice Costello, the sum of Eighty Thousand Dollars (\$80,000). Timely payment of this sum shall operate to extinguish Defendants The Permit Coordinators, Inc. and Scott C. Mielke's obligations to Defendants William and Janice Costello. In consideration of the foregoing, Defendants waive and release all asserted and unasserted claims against third parties for claims and demands of whatever nature arising out of or relating in any way to the design, permitting and construction of the post-Isabel revetment at issue in the litigation. This waiver and release of asserted and unasserted claims against third parties does not apply to the restoration work to be undertaken pursuant to this Consent Decree.

27. Upon completion of the restoration projects set forth in Appendix A, Defendants shall not dredge, excavate, fill, dewater, drain or otherwise disturb in any manner whatsoever any location seaward of the toe of the revetment identified in Appendix A, except as approved by the Corps and MDE.

V. NOTICES AND OTHER SUBMISSIONS

28. No later than 30 days after the deadline for completing any task set forth in Appendix A of this Consent Decree, Defendants William and Janice Costello shall provide Plaintiffs with written notice, at the addresses specified in Section IX of this Consent Decree, of whether or not that task has been completed.

29. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree or Appendix A.

30. No later than 45 days after completion of the tasks set forth in Appendix A of this Consent Decree, Defendants William and Janice Costello shall provide sealed "as-built" drawings of the new structure, to the addresses specified in Section IX of this Consent Decree.

31. In all notices, documents or reports submitted to Plaintiffs pursuant to this Consent Decree, Defendants shall certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

32. Until six (6) years after entry of this Consent Decree, Defendants William and Janice Costello shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Appendix A, regardless of any corporate retention policy to the contrary. Until six (6) years after entry of this Consent Decree, Defendants William and Janice Costello shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix A.

33. At the conclusion of the document retention period, Defendants William and Janice Costello shall notify Plaintiffs at least ninety 90 days prior to the destruction of any such records or documents, and, upon request by Plaintiffs, Defendants William and Janice Costello shall deliver any such records or documents to EPA, the Corps, or MDE. Defendants William and Janice Costello may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants William and Janice Costello assert such a privilege, they shall provide Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information required to be submitted to Plaintiffs

pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

34. A. Until termination of this Consent Decree, Plaintiffs and their authorized representatives and contractors shall have authority at all reasonable times to enter Defendants William and Janice Costellos' premises to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States or the State of Maryland pursuant to this Consent Decree;
- 3) Obtain samples relevant to the work contemplated by this Consent Decree;
- 4) Inspect and evaluate Defendants' restoration and/or mitigation activities; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

If construction is on-going, Plaintiffs and their authorized representatives and contractors shall follow any appropriate safety instructions from Defendants William and Janice Costello's contractors.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of Plaintiffs to conduct inspections, to require monitoring and to obtain information from Defendants as authorized by law.

VI. DISPUTE RESOLUTION

35. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between Plaintiffs and Defendants to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one Party

to the other affected Party or Parties that a dispute exists, unless agreed to in writing by those Parties. If a dispute between Plaintiffs and Defendants cannot be resolved by informal negotiations, then the position advanced by Plaintiffs shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. Plaintiffs shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendants shall bear the burden of proving by a preponderance of the evidence that Plaintiffs' position is not in accordance with the objectives of this Consent Decree and the Statutes, and that Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

36. If Plaintiffs believe a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the Statutes.

37. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 45, below, regarding payment of stipulated penalties.

VII. FORCE MAJEURE

38. Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. Such a Force Majeure event may include the failure to obtain or delay in obtaining a federal, state, or local permit. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site. Defendants William and Janice Costello anticipate obtaining a final, unappealable Anne Arundel County Grading Permit (the "Grading Permit") by September 1, 2007. If, despite the exercise of due diligence, Defendants William and Janice Costello do not obtain the Grading Permit by September 1, 2007, then Defendants William and Janice Costello shall provide notification of the delay as set forth in Paragraph 39 herein. Under such circumstances, the deadline for the completion of the actions required under this Consent Decree shall be controlled by the provisions of Paragraph 40 of this Consent Decree.

39. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify Plaintiffs in writing within seven (7) calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to Plaintiffs any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

40. If Plaintiffs determine that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA and MDE to determine when to begin or resume the operations that had been affected by any Force Majeure event.

41. If the Parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any Party may seek a resolution of the dispute under the procedures in Section VI of this Consent Decree.

42. Defendants shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity

controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

VIII. STIPULATED PENALTIES

43. After entry of this Consent Decree, if any Defendant fails to timely fulfill any requirement of the Consent Decree (including Appendix A), such Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|--|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$500.00 per day |
| B. | For Day 31 up to and including
Day 60 of non-compliance | \$1,000.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$3,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

44. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the Parties pursuant to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in Section VII shall be resolved upon motion to this Court as provided in Paragraphs 33 and 34.

45. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section.

46. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 38 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

47. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

48. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2005V00865, EPA Region III and the DOJ case number 90-5-1-1-17683. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of Maryland. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section IX of this Decree.

IX. ADDRESSES

49. All notices and communications required under this Consent Decree shall be made to the Parties through each of the following persons and addresses:

A. TO EPA:

- (1) Pamela Lazos
Assistant Regional Counsel (3RC2C)
United States Environmental Protection Agency
Region III

1650 Arch Street
Philadelphia, PA 19103

B. TO THE CORPS

Carl Jeffery Lorenz
Assistant District Counsel
United States Army Corps of Engineers
Baltimore District
Room 6420
10 S. Howard Street
Baltimore, Maryland 21201

C. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Section Chief
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

D. TO THE STATE OF MARYLAND, DEPARTMENT OF ENVIRONMENT

Jacqueline Russell, Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

E. TO DEFENDANTS WILLIAM AND JANICE COSTELLO:

Joseph F. Devlin, Esq.
Susan T. Ford, Esq.
Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, Fourth Floor
P.O. Box 2289
Annapolis, MD 21404-2289

F. TO DEFENDANTS SCOTT C. MIELKE AND THE PERMIT
COORDINATORS, INC.

John A. King, Esq.
Brett A. Pisciotta, Esq.
King & Attridge
The Anderson House

39 West Montgomery Avenue
Rockville, Md 20850

X. COSTS OF SUIT

50. Each Party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should any Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, such Defendant shall be liable for any costs or attorneys' fees incurred by Plaintiffs in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

XI. PUBLIC COMMENT

51. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. Plaintiffs reserve the right to withhold or withdraw their consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless Plaintiffs have notified Defendants in writing that it no longer supports entry of the Consent Decree.

XII. CONTINUING JURISDICTION OF THE COURT

52. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any Party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIII. MODIFICATION

53. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both Plaintiffs and Defendants and approved by the Court.

XIV. TERMINATION

54. Except for Paragraph 27, this Consent Decree may be terminated by any of the following:

A. Defendants and Plaintiffs may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the Statutes for twelve (12) consecutive months;

2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to Plaintiffs;

3. Defendants have certified compliance with the requirements of subparagraphs 1 and 2 above to the Court and all Parties; and

4. Within forty-five (45) days of receiving such certification from Defendants, Plaintiffs have not contested in writing that such compliance has been achieved. If Plaintiffs dispute Defendants' full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

C. Defendants Scott C. Mielke and The Permit Coordinators, Inc. may make a unilateral motion to the Court to terminate this Consent Decree as to Defendants Scott C. Mielke and The Permit Coordinators, Inc. after the following has occurred:

1. Defendants Scott C. Mielke and The Permit Coordinators, Inc. have paid all of their respective penalties and monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed by them to Plaintiffs or Defendants William and Janice Costello;
2. Defendants Scott C. Mielke and The Permit Coordinators, Inc. have certified compliance with the requirements of the preceding paragraph to the Court and all Parties; and
3. Within forty-five (45) days of receiving such certification from Defendants Scott C. Mielke and The Permit Coordinators, Inc., neither Plaintiffs nor Defendants William and Janice Costello have contested in writing that such compliance has been achieved. If any Party disputes Defendants Scott C. Mielke and The Permit Coordinators, Inc.'s full compliance, all portions of this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

Termination of the Consent Decree pursuant to this paragraph, 54.C, shall operate as a final order of satisfaction with respect to all claims, cross-claims, and other matters raised in the civil action or required under this Consent Decree with respect to Defendants Scott C. Mielke and The Permit Coordinators, Inc.

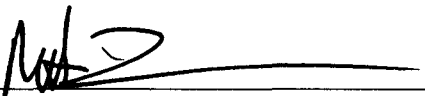
IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2007.

Richard D. Bennett
United States District Judge

ON BEHALF OF THE UNITED STATES:

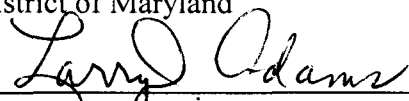
RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division



Kent E. Hanson, Trial Attorney
Michael B. Schon, Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

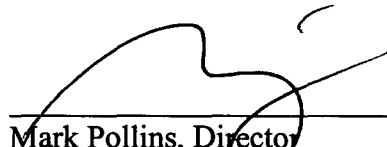
Dated: 6/14/07

ROD J. ROSENSTEIN
United States Attorney
District of Maryland




Larry D. Adams
Assistant United States Attorney
3636 S. Charles Street
Fourth Floor
Baltimore, MD 21201
(401) 209-4800

Dated: 6/15/07



Mark Pollins, Director
Water Enforcement Division (2243-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Dated: 6/6/07



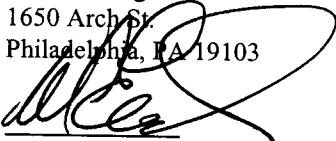
Thomas J. Charlton, Attorney Advisor
Water Enforcement Division (2243-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Dated: 6/1/07



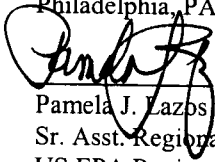
for Donald S. Welsh
Regional Administrator
US EPA Region III
1650 Arch St.
Philadelphia, PA 19103

Dated: 5/31/07



William C. Early
Regional Counsel
US EPA Region III
1650 Arch St.
Philadelphia, PA 19103

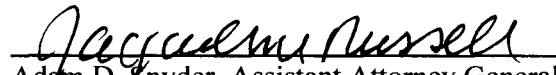
Dated: 5/29/07



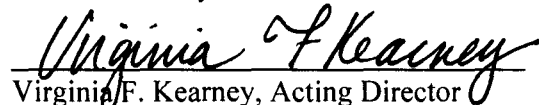
Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III
1650 Arch St.
Philadelphia, PA 19103

Dated: 5/29/07

ON BEHALF OF THE STATE OF MARYLAND

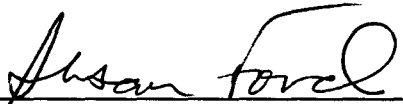

Adam D. Snyder, Assistant Attorney General
Jacqueline Russell, Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dated: 6/12/07


Virginia F. Kearney, Acting Director
Water Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dated: 6/12/07

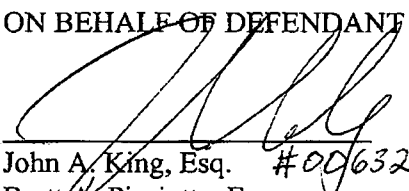
ON BEHALF OF DEFENDANT WILLIAM AND JANICE F. COSTELLO



Joseph F. Devlin, Esq.
Susan T. Ford, Esq.
Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, Fourth Floor
P.O. Box 2289
Annapolis, MD 21404-2289

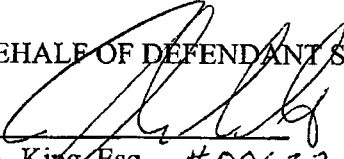
Dated: 6/14/07

ON BEHALF OF DEFENDANT THE PERMIT COORDINATORS, INC.


John A. King, Esq. #09632
Brett A. Pisciotto, Esq.
King & Attridge
The Anderson House
39 West Montgomery Avenue
Rockville, Md 20850

Dated: 6-15-07

ON BEHALF OF DEFENDANT SCOTT C. MIELKE



John A. King, Esq. #00632
Brett A. Fisciotta, Esq.
King & Attridge
The Anderson House
39 West Montgomery Avenue
Rockville, Md 20850

Dated: 6-15-07

APPENDIX A

Pursuant to the Consent Decree entered in the above-captioned matter, the revetment in place at the Site, as of the date of entry of the Consent Decree, shall be removed. A new structure ("the approved revetment") shall be constructed in the location depicted in the drawings making up pages two through six of this Appendix ("the drawings"). The bulkhead return walls serving the neighboring properties' bulkheads will be protected by flanking structures ("the flanking structures"). All earth fill channelward of the toes of the approved revetment and flanking structures will be removed to an elevation of zero mean low water.

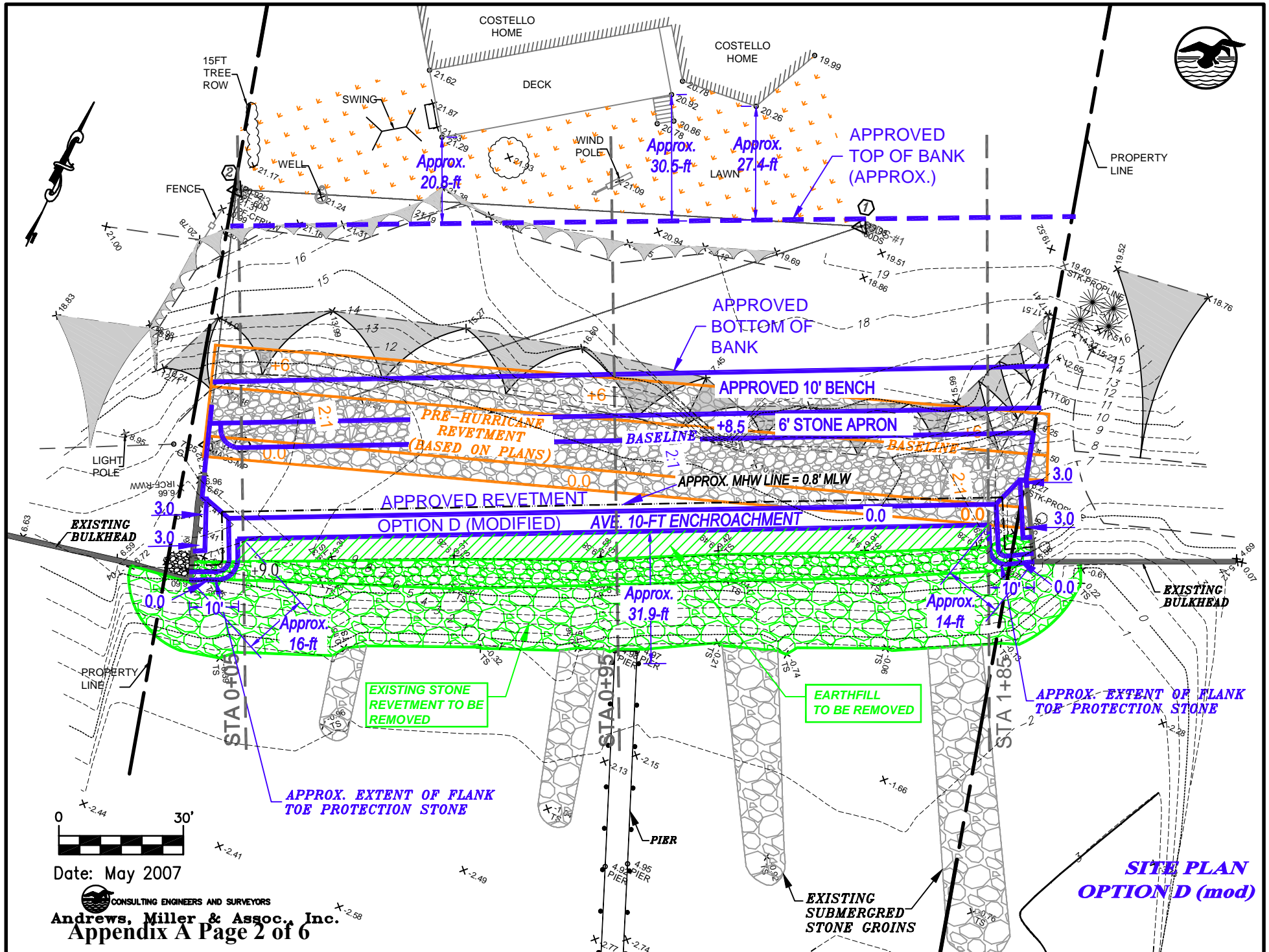
Defendants William and Janice Costello shall provide Plaintiffs notice, at the addresses specified in Section IX of the Consent Decree, 14 days before the beginning of any work done pursuant to the Consent Decree and this Appendix. Defendants William and Janice Costello shall complete the work prescribed in this Appendix by March 31, 2008, subject to paragraph 38 of the Consent Decree. All work shall comply with the conditions of Nationwide Permit 32, found at 72 Fed. Reg. 11,092, 11,187 (March 12, 2007).

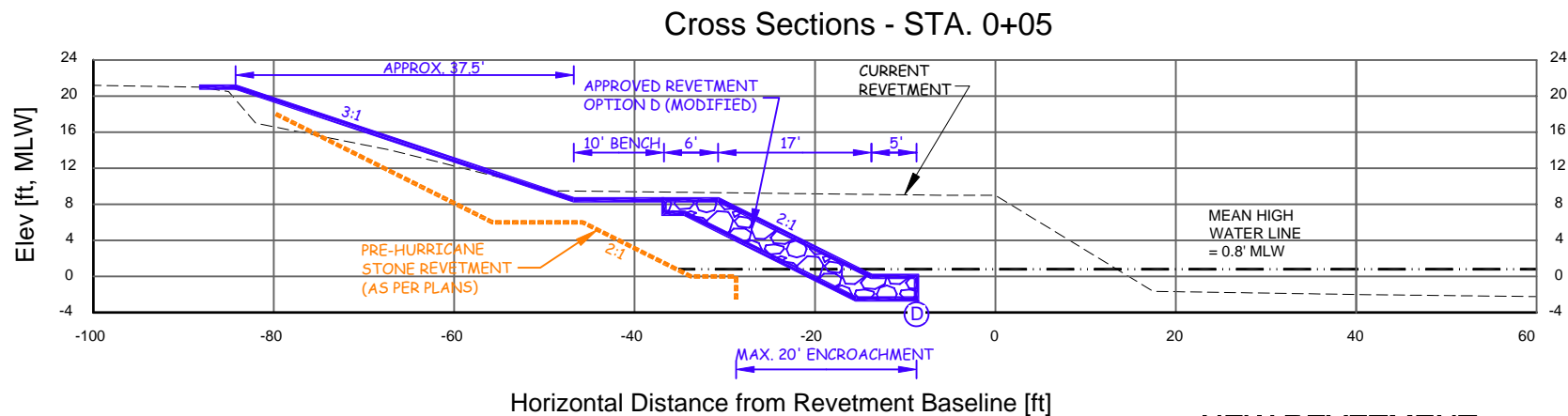
As depicted in the drawings, the dimensions of the approved revetment include a six-foot stone apron, a 17-foot stone face with a 2:1 slope, and a five-foot stone toe. Landward of the approved revetment will be a ten-foot bench and a bank with a 3:1 slope. The bulkhead flanking structures shall be built with a two-foot apron, a 2:1 slope, and a two-foot toe with filter cloth placed underneath. The channelward encroachment for the flanking structures will range from eight to ten feet.

The location of the top of the bank and its slope nearest the house may be field corrected as necessary to protect the trees, vegetation, well, and structures located in the vicinity of the top of the bank. Additional modifications landward of the face of the approved revetment may be made in the field as necessary to connect the Costello property to the neighbors' properties with appropriate grading. Any modifications shall not change the slope of the face of the approved revetment or the location of the toe of the approved revetment. Put another way, regardless of any field modifications, the toe of the approved revetment and the toe of the bulkhead flank protection shall extend no further channelward than depicted in the drawings and the slope of the revetment structure shall be 2:1.

For the purposes of this Appendix and all work conducted pursuant to this Consent Decree, the word "approximate" and the abbreviation "Approx." shall mean within the accepted degree of survey accuracy as described by COMAR § 09.13.06.03(G).

\\AGBA\CostelloRevetment\CostelloRevetment-D-Plan, 5/23/2007 10:38:07 AM



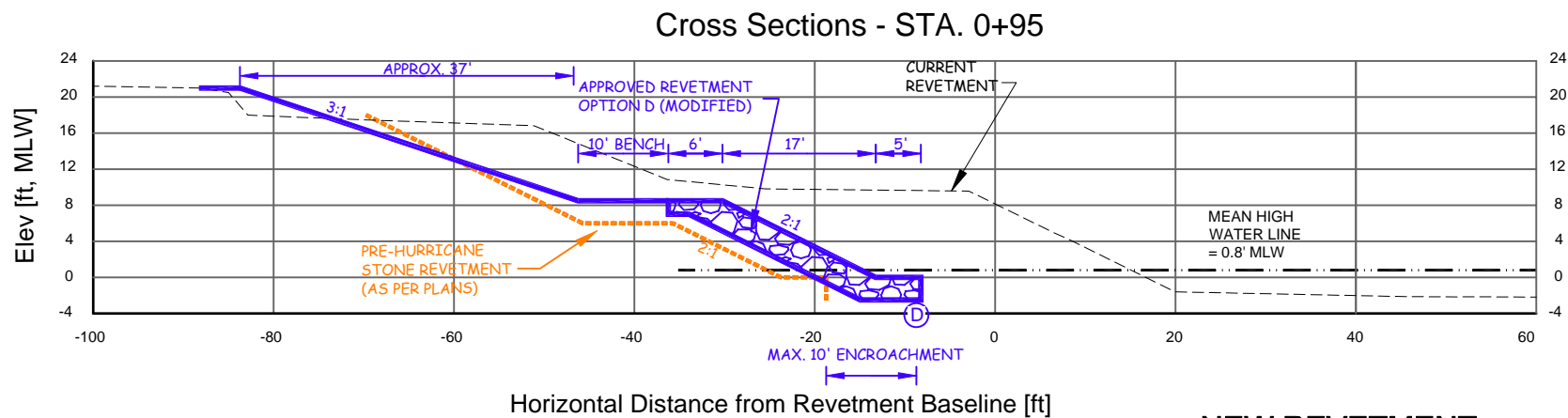


D (modified) - 3:1 bank slope, 10-ft bench, 6-ft stone revetment apron,
17-ft stone revetment sloping face, 5-ft stone revetment toe

NEW REVETMENT:
 TOP ELEV = +8.5
 APRON LENGTH = 6.0'
 FACE SLOPE = 2:1
 TOE LENGTH = 5.0'
 TOE TOP ELEV = 0.0



<div></div> <div>CONSULTING ENGINEERS AND SURVEYORS</div> <div>Andrews, Miller & Assoc., Inc.</div>		DES: O.Y.	DATE: MAY '07	<div>X - Sections</div> <div>D (mod)</div> <div><u>1</u> of <u>3</u></div>
		DRN: M.A.	SCALE: As Shown	
		CHK: O.Y.	JOB #: 04032	
<div><u>Main Office:</u></div> <div>401 Academy Street, Suite 1</div> <div>Cambridge, Maryland 21613</div> <div>Tel. 410-228-7117 * Fax 410-228-2735</div>		<div><u>Western Area Office:</u></div> <div>15 Old Solomons Island Road, Suite 104</div> <div>Annapolis, Maryland 21401 Tel.</div> <div>410-897-1004 * Fax 410-897-1005</div>		

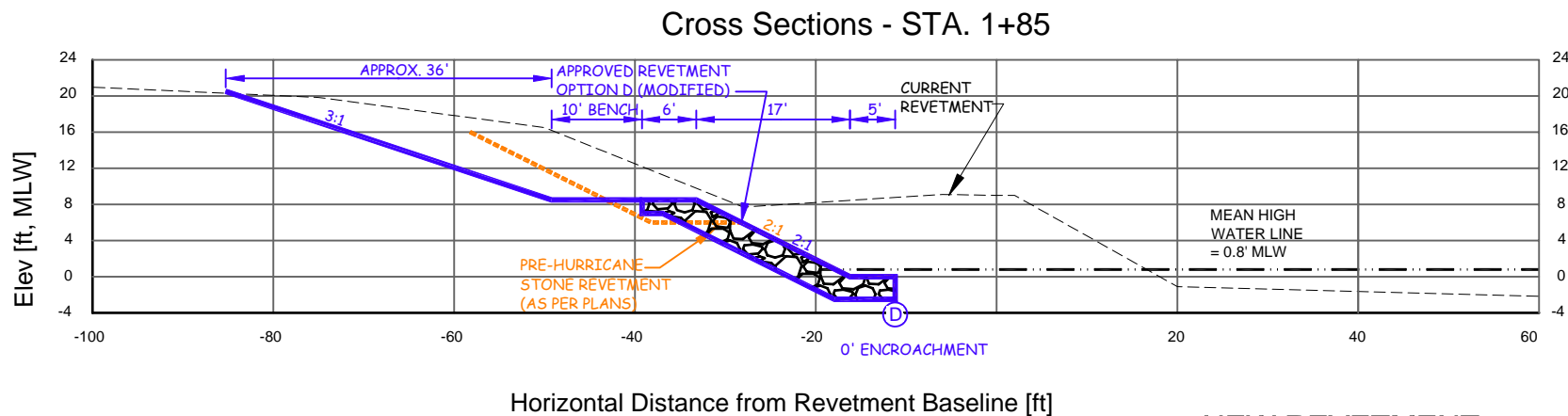


D (modified) - 3:1 bank slope, 10-ft bench, 6-ft stone revetment apron,
17-ft stone revetment sloping face, 5-ft stone revetment toe

NEW REVETMENT:
 TOP ELEV = +8.5
 APRON LENGTH = 6.0'
 FACE SLOPE = 2:1
 TOE LENGTH = 5.0'
 TOE TOP ELEV = 0.0



 <p style="text-align: center;">CONSULTING ENGINEERS AND SURVEYORS</p> <p style="text-align: center;">Andrews, Miller & Assoc., Inc.</p>		DES: O.Y.	DATE: MAY '07	X - Sections D (mod) 2 of 3
		DRN: M.A.	SCALE: As Shown	
Main Office: 401 Academy Street, Suite 1 Cambridge, Maryland 21613 Tel. 410-228-7117 * Fax 410-228-2735		CHK: O.Y.	JOB #: 04032	
Western Area Office: 15 Old Solomons Island Road, Suite 104 Annapolis, Maryland 21401 Tel. 410-897-1004 * Fax 410-897-1005				



D (modified) - 3:1 bank slope, 10-ft bench, 6-ft stone revetment apron,
17-ft stone revetment sloping face, 5-ft stone revetment toe

NEW REVETMENT:
 TOP ELEV = +8.5
 APRON LENGTH = 6.0'
 FACE SLOPE = 2:1
 TOE LENGTH = 5.0'
 TOE TOP ELEV = 0.0



 <p style="text-align: center;">CONSULTING ENGINEERS AND SURVEYORS</p> <p style="text-align: center;">Andrews, Miller & Assoc., Inc.</p>		DES: O.Y.	DATE: MAY '07	X - Sections D (mod) <u>3</u> of <u>3</u>
		DRN: M.A.	SCALE: As Shown	
Main Office: 401 Academy Street, Suite 1 Cambridge, Maryland 21613 Tel. 410-228-7117 * Fax 410-228-2735	Western Area Office: 15 Old Solomons Island Road, Suite 104 Annapolis, Maryland 21401 Tel. 410-897-1004 * Fax 410-897-1005	CHK: O.Y.	JOB #: 04032	

